

Applic. No. 10/633,995
Amdt. dated April 20, 2006
Reply to Office action of March 23, 2006

Remarks/Arguments:

Reconsideration of the application is requested.

Claims 1, 4-8, and 16-19 are now in the application. Claims 17-19 have been added.

In item 2 on page 2 of the Notice of Allowability, the Examiner entered an Examiner's amendment canceling withdrawn claims 9-15.

It is respectfully noted that the cancellation of claims 9-11 is an error by the Examiner. More specifically, in a telephone conversation with the Examiner on April 14, 2006, the Examiner agreed that claims 9-11 are based on Figs. 5 and 6 of the instant application and do properly depend from generic claim 1. Applicant agrees that claims 9-11 do properly depend from generic claim 1.

The Examiner also indicated in the telephone conversation that claims 12-15 are based on Figs. 7, 8 and 9 and are not sub-generic to or depend from generic claims 1 or 6 (as applicable). Applicant agrees that claims 12-15 should be cancelled.

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Based on the above-given facts the Examiner properly canceled claims 12-15. However, it is respectfully noted that claims 9-11 should have been rejoined and indicated as allowable (see MPEP § 806.04(h) and MPEP § 821.04(a)).

In a telephone conversation with the Examiner's supervisor, Kathy Matecki, on April 19, 2006, the actions of the Examiner were discussed and Examiner's supervisor cited 37 CFR 1.141 (a) as the basis for not rejoining the claims. As was explained to the Examiner's supervisor, it is respectfully noted that this is an improper application of the rule. More, specifically, the rule states the more than one species of an invention may be claimed in one national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form or otherwise include all the limitations of the generic claim. The rule is silent as to rejoining claims and does not pertain to rejoining claims that properly depend from a generic claim. Instead, the rule applies to an application having an allowable claim generic to all the claimed species. Accordingly, if claims 12-15 would have been cancelled by the Examiner, claims 9-11 along with the other allowable claims would have met the criteria of 37 CFR 1.141 (a). This is

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because there would have been an allowable claim generic to all the claimed species (cancelled claims 12-15 would not be a claimed species) and all the claims to species in excess of one would have been written in dependent form or otherwise include all the limitations of the generic claim. During the telephone conversation, the Examiner's Supervisor appeared to agree with Applicant's position.

Therefore, it is kindly requested that claims 17-19 (which are withdrawn claims 9-11, respectively) be added to the application. The addition of claims 17-19 does meet the requirement of 37 CFR 1.141 (a), namely that the application includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form or otherwise include all the limitations of the generic claim.

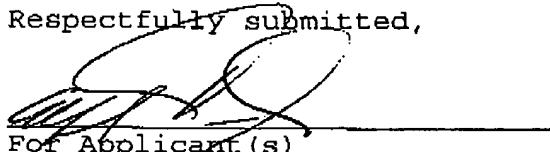
In view of the foregoing, reconsideration and allowance of claims 17-19 are solicited.

If an extension of time for this paper is required, petition for extension is herewith made.

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Please charge any other fees which might be due with respect
to Sections 1.16 and 1.17 to the Deposit Account of Lerner
Greenberg Stemer LLP, No. 12-1099.

Respectfully submitted,


For Applicant(s)

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